

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

SONIA ELISA E.,

Plaintiff,

v.

Civil Action No.
3:19-CV-0476 (DEP)

ANDREW M. SAUL, Commissioner of
Social Security,¹

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

LEGAL AID SOCIETY OF
MID-NEW YORK
221 South Warren Street
Suite 310
Syracuse, New York 13202

ELIZABETH V. KRUPER, ESQ.

FOR DEFENDANT

HON. GRANT C. JAQUITH
United States Attorney
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Syracuse, NY 13261-7198

AMY BLAND, ESQ.
Special Assistant U.S. Attorneys

¹ Plaintiff's complaint named Nancy A. Berryhill, in her capacity as the Acting Commissioner of Social Security, as the defendant. On June 4, 2019, Andrew M. Saul took office as Social Security Commissioner. He has therefore been substituted as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, and no further action is required in order to effectuate this change. See 42 U.S.C. § 405(g).

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.² Oral argument was heard in connection with those motions on July 1, 2020, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is

² This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

incorporated herein by reference, it is hereby

ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.
- 3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", is written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: July 8, 2020
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SONIA ELISA E.,

Plaintiff,

vs.

3:19-CV-476

ANDREW M. SAUL, COMMISSIONER OF
SOCIAL SECURITY,

Defendant.
-----x

Transcript of a **Decision** held during a
Telephone Conference on July 1, 2020, the HONORABLE
DAVID E. PEEBLES, United States Magistrate Judge,
Presiding.

A P P E A R A N C E S

(By Telephone)

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1 (The Court and counsel present by telephone.)

2 THE COURT: Let me begin by thanking both counsel
3 for excellent written and oral presentations, I have enjoyed
4 working with both of you.

5 Plaintiff has commenced this proceeding pursuant to
6 42 United States Code Sections 405(g) and 1383(c)(3) to
7 challenge a determination by the Commissioner of Social
8 Security denying plaintiff's application for benefits and
9 finding that she was not disabled at the relevant times.

10 The background is as follows: Plaintiff was born
11 in September of 1975 and is currently 44 years of age. She
12 was 40 years old at the time of the alleged onset of her
13 disability on March 1, 2016. Plaintiff stands 5 foot 1 inch
14 in height and weighs between 150 and 205 pounds at various
15 points in the record. She has apparently undergone bariatric
16 surgery. Plaintiff has a 12th grade education and attended
17 regular classes while in school. She is right-handed.
18 Plaintiff is separated. She has three children who are now
19 approximately 14, 21, and 23 years of age. She also has a
20 boyfriend who she met online. She has 50 percent custody of
21 her youngest son. Plaintiff resides in an apartment in
22 Norwich, New York. She has no driver's license and relies on
23 friends, Catholic Charities, or A&D Cab for transportation,
24 she does not use public transportation such as buses.

25 Plaintiff worked until November of 2015. She quit

1 her position at the time after an issue with her manager.
2 Over time, she has held various positions, including as a
3 kennel worker, a worker in her Off-Track Betting facility, a
4 cashier in various grocery and convenience store settings,
5 and an assembler in a manufacturing facility. She lost a job
6 in April of 2014 based on poor performance. Her longest
7 period of employment was between 2002 and 2004 in the
8 Polkville store. She did not work between 2005 and 2007 as a
9 result of her pregnancy and giving birth to her son. She
10 also did not work from 2010 to 2011 when she was
11 self-medicating with alcohol.

12 Plaintiff has a significant history of sexual abuse
13 and that and other stressors have caused her to suffer mental
14 impairments that have been variously diagnosed including as
15 OCD, or obsessive compulsive disorder, post-traumatic stress
16 disorder, or PTSD, major depressive disorder, MDD,
17 generalized anxiety disorder and bipolar disorder, borderline
18 personality disorder, adjustment disorder with depressed
19 mood, and alcohol abuse. She apparently has been abstinent
20 since February of 2016.

21 Plaintiff has been hospitalized on several
22 occasions including in the Bassett Medical Center emergency
23 room in November 2015, Binghamton General Hospital in
24 December 2015, again Binghamton General Hospital in
25 February 2016, Conifer Park, she underwent treatment there in

1 July of 2015, and New Horizons where she attended weekly
2 sessions between March and September of 2016. In June of
3 2016, she apparently made plans to overdose. That is
4 reflected in page 827 of the administrative transcript.
5 Plaintiff has treated with psychiatrist Dr. Nickolas -- the
6 records reflect that it might be T-o-g-l-a-s, we are going to
7 refer to Dr. Nickolas Toglas as Togias because that is the
8 way it appears in the administrative law judge's decision.
9 She has treated with Dr. Togias since June of 2016 and sees
10 him approximately every two months. She also treats with
11 LCSW Mary Ann Rason who she sees weekly. She also attends
12 weekly group sessions entitled Seeking Safety. Plaintiff
13 is -- her general physical needs are taken care of by
14 Physician's Assistant Erica Hill. She also at a time
15 underwent treatment at Chenango Behavioral Health with
16 another therapist, Kelly Hunter.

17 Plaintiff has been prescribed various medications
18 over time, including Effexor, Seroquel, Synthroid, trazodone,
19 Prozac, hydroxyzine, lithium, prazosin, Ravea, Estoril,
20 Depakote, and Latuda.

21 In terms of activities of daily living, at various
22 points in the record, including at 46 to 47 and 443, there is
23 indication that she can dress, shower, groom, cook, she shops
24 twice a week, she can do dishes, laundry, can vacuum, can
25 sweep, dust, clean, watches television, enjoys writing, can

1 go on social media and can FaceTime, visit friends. She has
2 a relationship with a boyfriend of some length. She has
3 expressed a desire to do volunteer work. She plays games
4 with her son, she plays games on her phone, and in 2017 drove
5 to and back from Florida.

6 Procedurally, plaintiff applied for Title II and
7 Title XVI benefits under the Social Security Act on
8 September 10, 2015. In that application, she alleged an
9 onset date of October 1, 2011, that was subsequently amended
10 to March 1, 2016. In support of her application, she claims
11 disability based on PTSD, major depressive disorder, and
12 generalized anxiety disorder. That appears at page 212 of
13 the administrative transcript.

14 A hearing was conducted on April 16, 2018, by
15 Administrative Law Judge, or ALJ, Mary Leary to address
16 plaintiff's application for benefits. On July 13, 2018, ALJ
17 Leary issued an unfavorable decision. That became a final
18 determination of the agency on March 18, 2019, when the
19 Social Security Administration Appeals Council denied
20 plaintiff's request for review. This action was commenced on
21 April 23, 2019, and is timely.

22 In her decision, ALJ Leary applied the familiar
23 five-step sequential test for determining disability. She
24 first found that plaintiff is insured or was insured through
25 June 30, 2018.

1 At step one of the sequential analysis, she found
2 that plaintiff had not engaged in substantial gainful
3 activity since March 1, 2016.

4 At step two, ALJ Leary concluded that plaintiff
5 does suffer from impairments that impose more than minimal
6 limitations on her ability to perform basic work functions,
7 including alcohol use, borderline personality disorder,
8 adjustment disorder with depressed mood, major depressive
9 disorder, PTSD, generalized anxiety disorder, bipolar
10 disorder, and OCD or obsessive compulsive disorder.

11 At step three, ALJ Leary concluded that plaintiff's
12 conditions do not meet or medically equal any of the listed
13 presumptively disabling conditions set forth in the
14 Commissioner's regulations, specifically considering Listings
15 12.04, 12.06, 12.08, and 12.15. She found in connection with
16 those listings that neither the B nor the C criteria are met
17 in this case.

18 After surveying the record, ALJ Leary concluded
19 that plaintiff retains the residual functional capacity, or
20 RFC, to perform work at all exertional levels with additional
21 nonexertional limitations as follows: She can understand,
22 remember, and carry out simple instructions consistent with
23 routine unskilled work; she can perform simple decision
24 making related to basic work functions; she can tolerate
25 frequent minor changes within the workplace and she can

1 tolerate occasional contact with coworkers and supervisors,
2 but no contact with the general public, in an occupation
3 where the individual can complete tasks relatively
4 independently, and where social interaction is not a primary
5 job requirement.

6 Applying that RFC at step four, Administrative Law
7 Judge Leary concluded that plaintiff is incapable of
8 performing her past relevant work, which was characterized as
9 a sales clerk, a gambling cashier, and a food sales clerk,
10 all of which were with an SVP of 3 -- I'm sorry, gambling
11 cashier is an SVP of 4. Sales clerk is in the light
12 category, gambling cashier is sedentary, food sales clerk is
13 light according to the vocational expert.

14 At step five, the administrative law judge
15 concluded based on the testimony of the vocational expert
16 that plaintiff, notwithstanding her impairments, is capable
17 of performing available work in the national economy, and
18 three example positions were cited, including as a stubber,
19 as a spiral binder, and as an automotive detailer, and
20 therefore concluded that plaintiff was not disabled at the
21 relevant times.

22 As you know, my function is limited, the standard
23 that I must apply is extremely deferential. I must determine
24 whether correct legal principles were applied, and the
25 resulting determination is supported by substantial evidence.

1 Substantial evidence, of course, is defined as such relevant
2 evidence as a reasonable mind might accept as adequate to
3 support a conclusion. As the Second Circuit noted in *Brault*
4 *v. Social Security Administration*, 683 F.3d 443 from 2012,
5 the standard to be applied is a rigorous standard. It is far
6 more rigid than the clearly erroneous standard that we are
7 all familiar with. The Second Circuit also noted that with
8 the substantial evidence standard in place, that means once
9 an ALJ finds facts, they can be rejected only if a reasonable
10 fact finder would have to conclude otherwise.

11 In this case, plaintiff has raised essentially two
12 contentions in support of her challenge to the determination.
13 She challenges the weight of medical evidence afforded by the
14 administrative law judge to the various opinions in the
15 record centering upon the records of treating source
16 Dr. Togias, which is also cosigned by Therapist Rason. She
17 also challenges the administrative law judge's evaluation of
18 her subjective complaints of symptomology.

19 The task of the administrative law judge begins
20 with formulating the plaintiff's RFC. A claimant's RFC
21 represents a finding of the range of tasks she is capable of
22 performing notwithstanding the impairments at issue. An RFC
23 determination is informed by consideration of all relevant
24 medical and other evidence. When assessing a claimant's RFC,
25 the ALJ must analyze exertional capabilities, which includes

1 such things as the ability to sit, stand, walk, lift, carry,
2 push and pull, as well as nonexertional limitations or
3 impairments, which include of course the mental impairments
4 of the type that are now at issue. And of course the RFC
5 determination must be supported by substantial evidence in
6 order for the resulting determination to be upheld.

7 The focus of this case is of course on the medical
8 records in evidence, and there are four of those in this
9 case. The first was cosigned by Dr. Togias and Therapist
10 Rason. It was given on February 27, 2018 and appears at
11 pages 869 to 871 of the record. In that medical source
12 statement, plaintiff was found to have marked limitations in
13 carrying out detailed instructions, marked limitations in the
14 ability to make judgments on simple work-related decisions.
15 She was found to have marked limitations in the areas of
16 interacting appropriately with the public and interacting
17 appropriately with supervisors, including accepting
18 instructions and criticism from them, as well as marked
19 limitations in responding appropriately to stress, work
20 pressures in the usual work setting, and responding
21 appropriately to changes in a routine work setting. She was
22 also found to experience marked limitations in the ability to
23 perform activities within a schedule, maintain regular
24 attendance and be punctual within customary tolerances, and
25 in the ability to complete a normal workday and workweek

1 without interruptions from psychologically-based symptoms and
2 to perform at a consistent pace without an unreasonable
3 number and length of rest periods. That opinion was assigned
4 little weight by the administrative law judge.

5 A second was from LCSW-R Kelly Hunter given on
6 March 10, 2016 and appearing at pages 447 to 449 of the
7 administrative transcript. In that statement, Therapist
8 Hunter indicates that plaintiff is very limited in the
9 following areas: Maintain attention/concentration, interact
10 appropriately with others, maintain socially appropriate
11 behavior without exhibiting behavior extremes, maintain basic
12 standards of personal hygiene and grooming, and appears to
13 be -- appears able to function in a work setting at a
14 consistent pace.

15 The next opinion is given by Dr. Sara Long, it was
16 dated April 12, 2016. Dr. Long, a psychiatrist, examined the
17 plaintiff on that date, and her report appears at pages 441
18 to 445 of the administrative transcript. Based upon her
19 examination, Dr. Long issued the following medical source
20 statement: "No limitations were observed regarding following
21 and understanding simple directions and performing simple
22 tasks. She was able to maintain attention and concentration
23 and is able to maintain a regular schedule. Generally, she
24 is able to learn new tasks, perform complex tasks, make
25 appropriate decisions, relate adequately with others, and is

1 capable of adequate stress management. Ms. E. presents with
2 significant history of sexual abuse, experiencing guilt
3 regarding the other children involved. She states she has
4 reported those problems to therapists in the past and not --
5 and told not to pursue it. It was today discussed with
6 Ms. E. that the concern is that this individual not be a
7 current risk to other children. She might discuss with her
8 therapist the option of making a police report and leaving it
9 to their judgment as to whether they want to confirm that
10 this person is not a current risk and reporting it to the
11 authorities would relieve her of having to carry any feelings
12 of responsibility as then it would be the judgment by the
13 third party as to whether it should be pursued." She went on
14 to state that the results of the present evaluation appear to
15 be consistent with psychiatric and history of substance abuse
16 problems which may interfere with her ability to function on
17 a regular basis.

18 The last opinion of record is from Dr. T.
19 Inman-Dundon, a state agency consultant. It appears a couple
20 places in the record as part of the Exhibit 3A and
21 Exhibit 4A. In his opinion, Dr. Inman-Dundon found that
22 plaintiff was moderately limited in some areas including as
23 follows: The ability to perform activities within a
24 schedule, maintain regular attendance and be punctual within
25 customary tolerances, the ability to complete a normal

1 workday and workweek without interruptions from
2 psychologically-based symptoms and to perform at a consistent
3 pace without an unreasonable number and length of rest
4 periods. Also found moderately limited in the ability to
5 accept instructions and respond appropriately to criticisms
6 from supervisors, and the ability to get along with coworkers
7 or peers without distracting them or exhibiting behavioral
8 extremes. She was rated as moderately limited also in the
9 ability to respond appropriately to changes in the work
10 setting, the ability to be aware of normal hazards and take
11 appropriate precautions, and the ability to set realistic
12 goals or make plans independently of others. There were not
13 any more serious limitations discerned by Dr. Inman-Dundon.

14 In Dr. Inman-Dundon's mental RFC opinion at page
15 87, he concludes as follows: It appears that claimant
16 experienced psychiatric decompensation in the context of
17 alcohol abuse. Currently claimant is abstinent, and appears
18 to be able to sustain simple tasks. Claimant can perform the
19 basic demands of unskilled work.

20 The -- as I said earlier, Dr. Togias and Therapist
21 Rason's opinions were given little weight. Therapist
22 Hunter's opinions were given little weight. Dr. Long's
23 opinion was given significant weight, and Dr. Inman-Dundon's
24 opinion was given great weight, and that is from May of 2016.

25 The focus of plaintiff's argument concerning these

1 opinions is on those of Dr. Togias. Dr. Togias obviously
2 qualifies as a treating source. Ordinarily the opinion of a
3 treating physician regarding the nature and severity of an
4 impairment is entitled to considerable deference provided it
5 is supported by medically acceptable clinical and laboratory
6 diagnostic techniques and not inconsistent with other
7 substantial evidence. If controlling weight is not given to
8 a treating source's opinion, the administrative law judge
9 must apply several factors to determine what degree of weight
10 should be assigned to the opinion. By regulations, those
11 factors include the length of the treatment relationship and
12 the frequency of examination, the nature and extent of the
13 treatment relationship, the evidence supporting the treating
14 provider's opinion, the degree of consistency between the
15 opinion and the record as a whole, whether the opinion is
16 given by a specialist, and other evidence that has been
17 brought to the attention of the administrative law judge. 20
18 C.F.R. Section 404.1527 and 404 -- 416.927. And of course
19 when a treating source's opinions are repudiated, the ALJ
20 must provide reasons for the rejection and those reasons must
21 be supported by substantial evidence.

22 In this case, the reasons given for not accepting
23 Dr. Togias' opinions stem from the determination by the
24 administrative law judge that they were not consistent with
25 the treatment notes from both Dr. Togias and Therapist Rason

1 as well as plaintiff's activities of daily living. It was
2 also noted -- it also is noted that being a check-the-box
3 form, sometimes those opinions of check-the-box forms are
4 given less weight, although there is some narrative in this
5 case.

6 The opinions of Dr. Togias are also inconsistent
7 with those of Dr. Inman-Dundon and Dr. Long. As I indicated
8 during the oral argument, I recognize the importance of a
9 treating source and the longitudinal knowledge and history
10 that can be provided by a treating source, particularly in a
11 mental health case. The -- in this case, when I look to
12 what's known as the *Burgess* factors, certain of those factors
13 have been discussed by Administrative Law Judge Leary.
14 Reference is made to Dr. Togias and his specialty as a
15 psychiatrist. Reference is made to the treatment notes.
16 There is no reference to the length of treatment and
17 frequency, but there is reference to the consistency of the
18 opinion with other medical evidence, and the amount of
19 evidence supporting the opinions.

20 The -- I have reviewed carefully the treatment
21 notes that appear in the record, including those at
22 Exhibit 10F from Physician's Assistant Erica Hall, and 11F
23 and continuing on, from Dr. Togias and Social Worker Rason,
24 and there was another social worker also in there, Karen
25 Grosso. And it -- as the administrative law judge noted,

1 those treatment records, although they do show some hot
2 spots, they do, for the most part, show a fairly benign
3 psychological and psychiatric status as the administrative
4 law judge noted at page 21. Many, many of the treatment
5 notes indicate that plaintiff was well-kempt, cooperative,
6 open and talkative, calm, good eye contact, stable mood,
7 euthymic mood, appropriate affect, normal speech, linear
8 thought process, no delusions elicited, intact judgment, good
9 insight, denied any perceptual disturbances, and although
10 there is indication of suicidal ideation or even attempts at
11 times, most of the reports from those physicians of the
12 treating sources indicate no suicidal or homicidal ideation.

13 The -- Dr. Long and Dr. Inman-Dundon's opinions are
14 both contrary to the opinions of Dr. Togias. A careful
15 review of the notes indicate that while plaintiff's condition
16 was somewhat cyclical, there was not a significant
17 deterioration after those individuals gave their opinions
18 that would require revisiting or minimize the impact of those
19 opinions.

20 So in summary, I don't find that the treating
21 source rule was violated. I think essentially the *Burgess*
22 factors, the regulatory factors were considered, but even if
23 they were not, as *Estrella* teaches, if the court, after a
24 searching review of the record, finds that the treating
25 source rule was not violated, then the error is harmless and

1 remand is not required. That is based on *Estrella v.*
2 *Berryhill*, 925 F.3d 90 from 2019 Second Circuit. In this
3 court one of my colleagues recognized similarly in *Reed v.*
4 *Commissioner of Social Security*, it is 5:16-CV-1134, found at
5 2018 WL 1183382 from the Northern District of New York,
6 March 6, 2018. It was also noted in *Reed* by Magistrate Judge
7 Carter that it is appropriate to rely on sources such as
8 Dr. Long, Dr. Inman-Dundon, and those opinions can provide
9 substantial evidence sufficient to overcome a treating source
10 opinion.

11 So I conclude, based on all of my review of the
12 record, the opinions of those sources, treatment notes of PA
13 Hill, Dr. Togias, and Rason, Therapist Rason, that no
14 reasonable -- a reasonable fact finder would not have to
15 conclude that the treating source opinions should be
16 accepted, and so I -- and I note that this case is not
17 similar to *Estrella*. *Estrella* involved a very different
18 situation where the administrative law judge cherrypicked two
19 positive treatment notes, and in light of those and GAF
20 scores and consultative examiner in the face of treatment
21 notes that showed a very different situation for that
22 plaintiff. So in conclusion I find plaintiff failed to show
23 that no reasonable fact finder could have reached the
24 administrative law judge's conclusions concerning the
25 treating source issue.

1 The second issue raised by the plaintiff concerns
2 the treatment of plaintiff's subjective complaints.
3 Obviously an ALJ must take into account plaintiff's
4 subjective complaints in rendering the five-step disability
5 analysis. 20 C.F.R. Sections 404.1529 and 416.929. However,
6 when examining the question, the ALJ is not required to
7 blindly accept the subjective testimony of a complainant -- a
8 claimant, and rather, retains discretion to weigh the
9 credibility in light of other evidence in the record.

10 The regulations and the case law provide a two-step
11 analysis to be made when reviewing credibility which is
12 governed by SSR 16-3p. When assessing credibility and a
13 plaintiff's subjective symptomology, an ALJ must consider
14 certain relevant factors including the claimant's daily
15 activities, the location, duration, frequency, and intensity
16 of any symptoms, any precipitating and aggravating factors,
17 the type, dosage, effectiveness and side effects of any
18 medication taken and other treatment received as well as
19 other measures taken to relieve the symptoms. There are
20 other factors as well.

21 In this case, the administrative law judge
22 recounted plaintiff's claims at page 18 and concluded that,
23 after careful consideration of the evidence, the undersigned,
24 ALJ Leary, finds that the claimant's medically determinable
25 impairments could reasonably be expected to cause the alleged

1 symptoms. However, the claimant's statements concerning the
2 intensity, persistence, and limiting effects of the symptoms
3 are not entirely consistent with the medical evidence and
4 other evidence in the record for the reasons explained in
5 this decision. If the administrative law judge had stopped
6 there, the case law is clear that that would be insufficient
7 to provide meaningful judicial review of the ALJ's thinking.
8 The ALJ, however, went on to discuss treatment notes, the
9 conservative treatment undergone by the plaintiff, her
10 activities of daily living, and the medical evidence in the
11 record. At page 20, ALJ Leary summarizes, "Overall, the
12 evidence in the record consists primarily of documentation of
13 the claimant's subjective complaints with little in the way
14 of objective findings to support functional limitations of
15 the severity the claimant has alleged. The claimant received
16 far less treatment than one would expect of someone
17 experiencing pain and limitation of the severity she has
18 reported. Considering the objective evidence in light of the
19 claimant's self-described activities of daily living, the
20 record as a whole, and the consistency of claimant's
21 statements and testimony, the undersigned finds the claimant
22 can perform work within the limitations described in the
23 residual functional capacity assessment set forth herein."

24 Having reviewed carefully the decision, I find that
25 the SSR 16-3p has been followed and that the explanation

1 given for rejecting plaintiff's claims of symptomology afford
2 the court a basis for meaningful judicial review. I find
3 that the plaintiff has not demonstrated that no reasonable
4 fact finder could reach the same conclusion that the ALJ
5 reached when considering plaintiff's symptomology.

6 In summary, I find that correct legal principles
7 were applied, and the resulting determination is supported by
8 substantial evidence. I will therefore grant judgment on the
9 pleadings to the defendant and direct dismissal of
10 plaintiff's complaint.

11 Thank you both again, I hope you stay safe in these
12 interesting times.

13 MS. KRUPER: Thank you.

14 MS. BLAND: Thank you, your Honor, everyone stay
15 safe.

16 (Proceedings Adjourned, 2:52 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal
Official Realtime Court Reporter, in and for the
United States District Court for the Northern
District of New York, DO HEREBY CERTIFY that
pursuant to Section 753, Title 28, United States
Code, that the foregoing is a true and correct
transcript of the stenographically reported
proceedings held in the above-entitled matter and
that the transcript page format is in conformance
with the regulations of the Judicial Conference of
the United States.

Dated this 6th day of July, 2020.

/S/ JODI L. HIBBARD

JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter